IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.405 OF 2005

Shri Damodar Raghunathgiri Gosavi ..Appellant

Versus

1. Shri Chandrakant Vamanpuri Gosavi
2. Mrs.Kishori Chandrakantpuri Gosavi ..Respondents

Mr.G.S.Godbole for appellant
None for respondents

CORAM : P.V.KAKADE, J.

DATE : 6TH JUNE, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order dated 2nd November, 2004 passed by the 2nd Additional District Judge, Nasik dismissing the appeal and confirming the judgment and order passed by the lower court decreeing the suit and directed the appellant to hand over vacant possession of the house property within three months from the date of the decree.

2. Heard Mr. Godbole, the learned counsel for the appellant, who took me through the relevant part of the depositions of the parties as well as certain documents relied upon by them.

3. The house property bearing C.T.S. No.509 and House No.353 are located at Nasik and are owned by the plaintiffs. The present respondent filed Regular Civil Suit No.883 of 1996 against the original defendant late Damodar, the deceased husband of the present appellant, in Civil Court, Nasik for declaration that the defendant - Damodar was not a tenant of the plaintiff in respect of the suit property i.e. part of second floor of House No.353, CTS No.509, situated at Sarsubhe Lane, Raviwar Peth, Nasik and for possession of the property. The original defendant - Damodar filed the written statement in that suit and also made a counter claim. The learned trial judge proceeded with the dispute on merits and came to the conclusion that the present appellant failed to establish his plea of tenancy and consequently the decree for vacant possession of the premises came to be passed. The appeal was carried in District Court, Nasik. The learned Addl. District Judge after hearing

both the parties confirmed the findings recorded by the lower court and dismissed the appeal. Hence the present appeal.

4. At the outset it may be noted that there is absolutely no substantial question of law involved in this case. The learned counsel for the appellant sought to rely upon the stray admission given by the other side in the course of their deposition to the effect that the appellant had forced his entry in the suit premises. On the basis of this so called admission it was submitted that if the entry was forced in the premises about 25 years prior to the evidence, then the question of limitation would arise and the cause would be barred by law of limitation. Perusal of the entire evidence in its totality is clear that it is nothing but stray admission, it cannot be taken into consideration to decide the fate of the suit, especially when there is other overwhelming evidence on record suggesting that the possession of the suit premises was given to the appellant as a permissive user due to close relationship between the parties. Moreover, it is the case of the appellant that in fact he was tenant but due to close relationship rent receipts were never insisted upon.

However, while taking this plea the appellant has also not answered the obvious question that is about the evidence pertaining to payment of rent. In absence of entire evidence in support of the plea of tenancy, it is found that both the courts below have rightly come to the conclusion that the appellant has failed to establish his plea of tenancy and as such his possession has become that of a trespasser after demand of the premises was made to him. In other words the issues involved are the issues of fact, which are seen to be adjudicated by the courts below in negative and properly and therefore, it would brook no interference by this court at this stage.

5. In the result the appeal stands dismissed.

6. The learned counsel for the appellant submitted that the present appellant is a widow and therefore, she should be given some time to vacate the suit premises. In view of the facts and circumstances the appellant shall vacate the suit premises on or before 1st December, 2005 on condition to furnish Undertaking to this Court to that effect within two weeks from today.

6. Consequently the civil application also stand dismissed with no order as to costs.

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